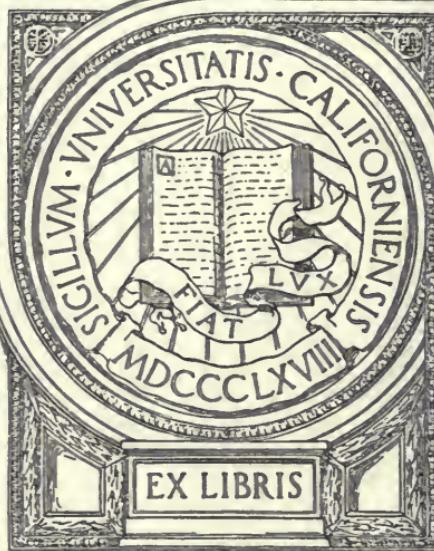


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# EXCESS CONDEMNATION

WHY THE CITY OF CHICAGO SHOULD HAVE THE POWER,  
IN MAKING PUBLIC IMPROVEMENTS, TO TAKE  
PROPERTY IN EXCESS OF ACTUAL REQUIREMENTS

LESSONS TO BE DRAWN FROM CERTAIN UNFORTUNATE  
ASPECTS OF THE TWELFTH STREET AND MICHIGAN  
AVENUE WIDENING PROJECTS AND THE PRO-  
POSED OGDEN AVENUE EXTENSION

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REPORT PREPARED BY THE  
CHICAGO BUREAU OF PUBLIC EFFICIENCY

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SEPTEMBER, 1918

## PRIOR PUBLICATIONS

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**REPORT PREPARED BY THE  
CHICAGO BUREAU OF PUBLIC EFFICIENCY**

**315 PLYMOUTH COURT**

CHICAGO BUREAU  
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## INTRODUCTION

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The accompanying report on EXCESS CONDEMNATION serves to illustrate anew the old assertion that some of the worst instances of waste and inefficiency in city government are beyond the power of local authorities to control. The Chicago Bureau of Public Efficiency, in this report, calls attention to certain deplorable conditions in connection with the projects for the widening of Twelfth Street and Michigan Avenue and for the extension of Ogden Avenue. For the particular conditions herein criticised, however, the City authorities are in no wise blamable, unless it be for failure to push with more vigor the movement for needed enlargement of powers. While, under the present Constitution, partial relief might be granted by the Legislature, the effectiveness of that procedure is subject to so much uncertainty that prudence suggests constitutional revision as a prerequisite to attempts to deal with the subject by statute.

This report is put before the public in the hope that it may help the movement for a constitutional convention in Illinois, upon which the people are to vote at the coming election in November, and that it may indicate needed action upon one important subject with which the constitutional convention and succeeding Legislatures may be expected to deal. Not that this particular matter is sufficient alone to call for a convention to revise the Constitution. If enlargement of powers to authorize excess condemnation were the only constitutional change needed, relief might be had through the process of amendment.

But the matter to which attention is called in this report is typical of the entire situation. On every hand efforts to better governmental conditions in this community are hampered by constitutional restrictions. Proper enlargement of powers, of which the need for the right of excess condemnation is but one illustration of many that can be cited, is to be had only through a constitutional convention.

In connection with the gathering of material for this report and its preparation for publication, Mr. Harry K. Herwitz, of the Bureau staff, is entitled to special mention.

CHICAGO BUREAU OF PUBLIC EFFICIENCY,  
HARRIS S. KEELER,  
*Director.*

September, 1918.

## SUMMARY AND CONCLUSIONS

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A study of the manner in which the Twelfth Street and Michigan Avenue improvements have been carried through discloses certain startling conditions that should challenge the attention of the community and lead it to prevent their recurrence in the future.

In taking by condemnation property for these street-widening projects, small and odd-shaped remnants that are unsuitable for building purposes have been left in the hands of private owners.

The most flagrant example is furnished by a corner lot known as the Price property which had a frontage of 166 feet on Twelfth Street and 71 feet on Wabash Avenue. In widening Twelfth Street at that point, the City took 68 of the 71 feet. This left in the possession of the private owner a lot remnant with a frontage of 166 feet on Twelfth Street and a depth of only three feet. The City was required by the courts to pay the full value of the entire 71 feet though it secured title and control to but 68 feet thereof.

A lot three feet deep with a frontage of 166 feet on an improved street might be used for billboards but not for much else. So long as it remains under separate ownership it must constitute a nuisance and may be an eyesore.

Experience in other cities shows that lot remnants unsuitable for building purposes, instead of being sold

speedily to owners of adjoining property, do in fact remain under separate ownership for long periods of time.

The widening of Twelfth Street and Michigan Avenue left many other lot remnants as shown on the diagrams accompanying this report.

On Michigan Avenue the City took all, or parts, of lots having a total frontage of approximately 3,000 feet. This does not include property taken for plazas. When the improvement is actually completed, along this 3,000 feet there will be lot areas with a frontage of 617 feet, having depths varying from five feet to 14 feet. Thus, so long as these remnants remain under ownership separate from that of adjoining property—and this may be for many years—approximately one-fifth of the entire frontage involved in the widening process will remain vacant or will be used only for billboards, small one-story shops, or other make-shift structures.

When it comes to diagonal streets, the situation is likely to be even worse. The proposed Ogden Avenue extension, which is to be cut through as a new diagonal street, if carried out in accordance with the present survey, will leave 93 remnants (with a frontage of approximately 3,300 feet on the proposed new street) that will be too small or too irregular in shape to be available for building purposes.

Small and odd-shaped lot remnants not only result in public nuisances, but their existence defeats one of the main purposes of street widening—that of securing an imposing thoroughfare.

Another consequence of such situations is that the City or other property owners, or both, suffer financial loss through inability of the authorities to collect as much in

special assessment benefits and in taxes as otherwise might be secured.

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The way to prevent these abuses is to confer upon the City the power of excess condemnation. Under this power the City, in making a public improvement, could acquire by condemnation more property than is necessary for the precise, narrow purpose of the improvement, using the excess property so taken in any way that might be in the public interest, or selling it for private use subject to restrictions calculated to promote the larger purpose of the improvement.

In the case of a street widening or opening, the possession of such power would enable the City to take by eminent domain, in addition to land that is to form a part of the street, such areas along the improved thoroughfare as may be needed for the formation of suitable building lots, and to sell them subject to restrictions as to use.

The original Chicago Plan report, prepared under the direction of Mr. Daniel H. Burnham, published in 1909, laid emphasis upon the need for the power of excess condemnation. Since that time several states—Ohio, New York, Massachusetts, Wisconsin, and Rhode Island—have amended their constitutions so as to authorize excess condemnation. Illinois has done nothing in connection with this subject. If the recommendations of the report of 1909 with respect to excess condemnation had been put into effect, the abuses arising out of the Twelfth Street and Michigan Avenue widening projects, to which this report directs attention, need not have occurred and those in connection with the proposed Ogden Avenue extension could now be avoided.

Constitutional and statutory changes needed to give the

City the power of excess condemnation should be made speedily so that the municipality may obtain more satisfactory results in carrying out other features of its city planning program. In urging action to secure the needed enlargement of powers, the Bureau does not mean to intimate that projects already under way should not have been started, or that new projects should be delayed. It will take several years to bring about the desired constitutional changes. Important public improvements cannot be held back to await the outcome of a constitutional convention. The purpose of this report is to emphasize the need for securing the power of excess condemnation as soon as possible; not to interpose new obstacles to projects which it is hoped to carry out in the near future.

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In amending the Constitution to authorize the exercise by governmental agencies of the power of excess condemnation, provision should be made for the passing of full title when property is taken under the law of eminent domain. At present, in Illinois, the agency taking property by condemnation secures only the right of use for a specific purpose. If the City condemns land for a school site, for example, and later abandons the use for that purpose, the property reverts to the original owner or his heirs. Where property has been acquired in good faith for a public purpose and full value has been paid therefor, and it is later found that such property is no longer needed for the particular purpose for which it was acquired, the City should have the right to treat it as a public asset, and to change its use or sell it.

In the interest of the city planning movement railroads also should be permitted to sell property which they may take under condemnation proceedings for railroad use

but which later may not be needed for railroad purposes. Under a plan of wise rearrangement of terminals in Chicago, much property now in the possession of the railroads should be freed for other uses. It should be possible to carry out such a plan without reckoning with the heirs of original owners of property taken by condemnation, who received full value for the lands at the time of acquisition.



## EXCESS CONDEMNATION

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### THE NEED FOR THIS POWER IN CHICAGO

As a part of its city planning program, Chicago has carried practically to completion the project for the widening of Twelfth Street between Michigan and Ashland Avenues. Legal barriers to the execution of the Michigan Avenue improvement have all been eliminated at last, and the physical work of widening that thoroughfare between Randolph Street and Chicago Avenue has actually been started.

A study of the manner in which these highly valuable improvements have been carried through and of some of the results obtained discloses certain startling conditions that should challenge the attention of the community and lead it to seek means of preventing their recurrence in connection with further improvements of this nature.

Under the Constitution and statutes of Illinois a city may condemn for street-widening purposes precisely so much land as is needed for the specific purpose of the improvement, and no more. Where the situation is such that a very small remnant will be left to the owner, after the city has taken the portion of land needed for street-widening purposes, the city is usually required by the courts to pay the full value of the entire piece, though the title to the remnant remains in the private owner. Thus the city is obliged to pay for property it does not secure.

Worse than that. The leaving of remnants unsuitable for building purposes tends to defeat one of the main aims

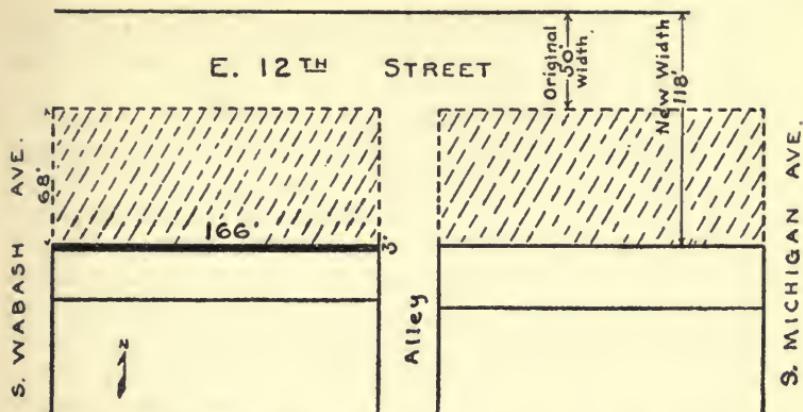
of the improvement, which is to secure an imposing thoroughfare as well as to provide a wider street for traffic. In many cases these remnants are so small that they can be used only for billboards or for other flimsy and undignified structures.

The leaving of remnants between the improved street and property that otherwise would abut on the new thoroughfare operates to reduce the amount which the city can collect in the form of special assessment benefits from neighboring property. A tract of land separated only a few feet from a widened street cannot be assessed as heavily for benefits as if it had frontage on the improved street.

#### THE PRICE PROPERTY

The Twelfth Street project called for adding enough land to the south side of the street to give the thoroughfare between Ashland Avenue and Canal Street a width of 108 feet and between Canal Street and Michigan Avenue a width of 118 feet. In the block between Wabash and Michigan Avenues this required the taking of land on the south side of the street to a depth of 68 feet. Between Wabash Avenue and the alley to the east was a parcel of land with a frontage of 71 feet on Wabash Avenue, extending 166 feet along Twelfth Street to the alley. The taking by the City of 68 feet in depth of this parcel left the owner a strip adjoining the improved street which was 166 feet long and only three feet deep. This situation is illustrated by the diagram on page 15.

This parcel of land was the subject of litigation between the owner and the City, in the course of which the Supreme Court of Illinois held that the City not only could not assess benefits for the widening project against such a remnant, but that it should compensate the owner



**TWELFTH STREET WIDENING**—Lot remnant with a frontage of 166 feet on Twelfth Street as widened and a depth of 3 feet. The property involved, known as the "Price Property," is located at the southeast corner of Wabash Avenue and Twelfth Street. Originally the lot had a frontage of 71 feet on Wabash Avenue. The widening of Twelfth Street left the 3-foot strip shown.

for the full value of the entire parcel, of which it took but 68 feet, leaving title to three feet in the owner.

In an earlier decision involving the Twelfth Street widening project (*City of Chicago v. Lord*, 276 Ill. 549), the Court said:

"The owner of property is entitled to compensation for the property actually taken and of which said owner is deprived, and is also entitled to damages, if any, to the property not taken. \* \* \* In some cases but a small portion of the property will be taken, and that in such a way that the remainder of the property will be fully as valuable as it was before the taking. In other cases a portion of the property may be taken in such a way as to leave the portion not taken of no value or of such little value that the condemnation will, in effect, amount to taking the whole."

Applying this rule to the Price property, the Court said (277 Ill. 407):

"The Price property, at the southeast corner of Twelfth Street and Wabash Avenue, has a frontage

of 71 feet on Wabash Avenue and a depth of 165½ feet. By the condemnation 68 feet in width was taken and a strip three feet wide and 165½ feet deep left. The commissioners assessed \$3,000 for benefits on this three feet, and the [lower] court removed that assessment but allowed no damages. The three-foot strip had been a part of a corner piece of property estimated with the whole at the same price per foot, and it would be useless for any purpose of business or occupation. Witnesses for the City insisted that it would have a strategic or speculative value by preventing access of the adjoining property owner on the south to Twelfth Street and could be used as an obstruction to compel the adjoining owner to buy it, or the owner could put a billboard on it, which would produce income. The adjoining proprietor might decline to be held up and allow the owner to pay the taxes and street improvements on 165½ feet frontage with no income at all until the owner of the three-foot strip would yield, but, at any rate, such value is not a fair market value. \* \* \* Our conclusion is that there was damage to that strip which ought to have been allowed."

It may be entirely just that the City in such a case as that under consideration should pay the owner the full value of the entire parcel. But common sense dictates that the City should have the entire property after it has paid the owner its full value. However, inflexible rules of law prevail over common sense in that matter. Public authorities, if they are to carry out improvements at all, must deal for the present with legal situations as they find them, not as they ought to be. Clearly, the Constitution and laws of Illinois ought to be liberalized so as to permit the Legislature to authorize a city, in connection with public improvements, to take remnants such as that left at the corner of Twelfth Street and Wabash Avenue. The Chicago Bureau of Public Efficiency believes the grant of power should be even broader and should authorize the taking not only of remnants but of

such additional land as may be needed to promote the purpose of the improvement.

#### LOSS IN ASSESSMENTS

The situation created by the taking of 68 feet of a 71-foot parcel at the corner of Twelfth Street and Wabash Avenue indicates also how the community suffers loss both in benefit assessments and in taxes from the policy of leaving remnants unsuitable for building purposes.

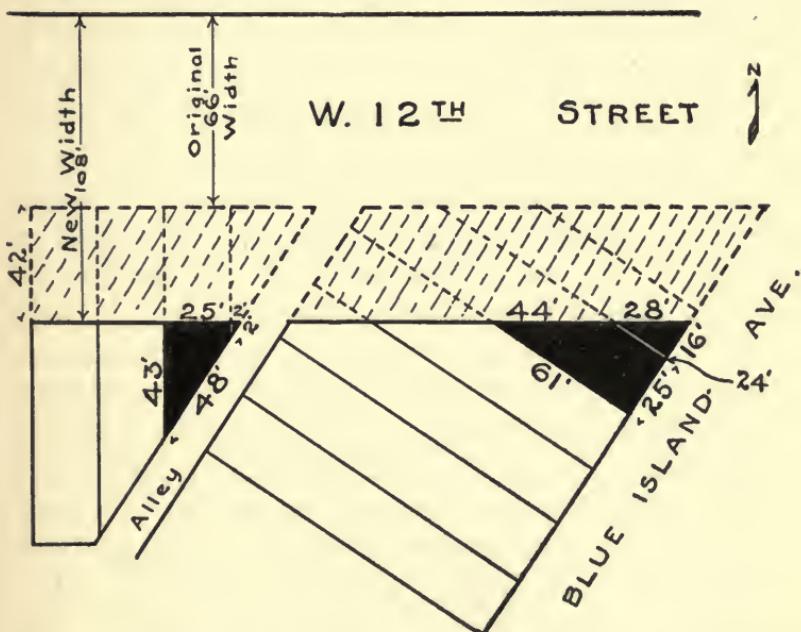
Not only are remnants of lot areas, which are left after a street improvement is made, useless in themselves for proper building purposes, but by depriving the adjoining property of frontage on the new or widened street they frequently prevent what would be the best economic use of the adjoining lot and also cause direct financial loss to the municipality. The amount of the special assessment which could be normally assessed against the adjoining property is reduced to a large extent because this property has not derived the full benefit resulting from the improvement by reason of the remnant lot area lying between it and the widened street.

Next to the Price property at the corner of Wabash Avenue and Twelfth Street is a lot on Wabash Avenue 50 feet wide. For the Price property the award to the owner was at the rate of \$3,000 a front foot for the entire 71 feet of frontage on Wabash Avenue—\$204,000 compensation for the 68 feet taken and \$9,000 consequential damages for the three feet not taken. The owner of the 50-foot lot immediately adjacent fronting on Wabash Avenue was assessed for benefits \$14,200—\$11,000 for the first 25 feet and \$3,200 for the next 25 feet. This property was assessed as an inside lot, not as corner property, because the three-foot strip of the old 71-foot lot intervened.

Across the alley to the east were lots fronting on Michigan Avenue. At the corner of Twelfth Street before it was widened there was a lot having 50 feet frontage on Michigan Avenue and immediately adjacent to it to the south there was another 50-foot lot. The City widened Twelfth Street at this point by 68 feet, taking all of the first lot of 50 feet and 18 feet of the second lot, leaving the second lot with a frontage of 32 feet on Michigan Avenue but with a new frontage on Twelfth Street as widened. The court confirmed a special assessment of \$60,000 against the new 32-foot lot for benefits, because it was now corner property where formerly it was an inside lot. Compensation was awarded at the rate of \$7,000 per front foot for the 50-foot lot taken in its entirety, making \$350,000; for 18 feet taken from the second lot compensation amounting to \$81,000 was allowed. In other words, the total award for the 68 feet taken at this place was \$431,000.

If the award of compensation for Michigan Avenue property is compared with that for Wabash Avenue frontage, it is found that for the 68 feet on Michigan Avenue an award of \$431,000 was made and for the similarly situated 68 feet on Wabash Avenue an award of \$204,000 was made. The awards show that in the opinion of the court the property on Wabash Avenue is a little less than one-half as valuable as that on Michigan Avenue. The lot at the northeast corner of Twelfth Street and Wabash Avenue (across the street from the Price property) was assessed \$16,000 for benefits, while the lot of similar size at the northwest corner of Twelfth Street and Michigan Avenue was assessed \$32,000. At the same ratio of value, for a 32-foot lot on the corner of Wabash Avenue and Twelfth Street as widened there would have been assessed a benefit of approximately \$30,000, in view

of the assessment of \$60,000 for benefits on the new Michigan Avenue corner. As a matter of fact, because the property on Wabash Avenue corresponding to the 32 feet on Michigan Avenue was divided into two parcels, one a three-foot strip along the corner and the other inside property, the assessment for benefits was as follows: twenty-five feet south of the three feet remaining on the corner of Wabash Avenue and Twelfth Street as widened —\$11,000; four feet at the rate of \$3,200 per 25-foot frontage—\$500, making a total of \$11,500. And there was the three-foot strip on the corner, for which there was no



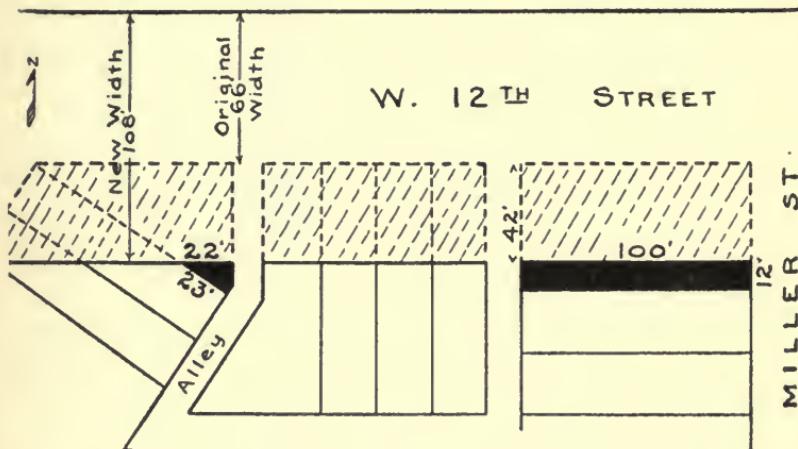
**TWELFTH STREET WIDENING**—Lot remnants caused by the widening of Twelfth Street at its intersection with Blue Island Avenue, which is a diagonal thoroughfare. In some instances such lot remnants remain under separate ownership for long periods of time, thus preventing proper building development. In other cases, unity of ownership is effected speedily. The two adjacent remnants at the corner of Twelfth Street and Blue Island Avenue, which were separate properties to begin with, have been brought under common ownership and are now covered by a single building.

assessment for benefits but instead an award for damages to the owner which the City paid, amounting to \$9,000, so that the net assessment for benefits for the 32 feet immediately south of Twelfth Street on Wabash Avenue as widened actually amounted to but \$2,500, instead of almost \$30,000, which it might have been had the City been able to take the three-foot strip and for which it had to pay full value in damages, because there would then have been assessable corner property at Wabash Avenue and Twelfth Street.

Other cities, in levying special assessments, have discovered a similar effect of the leaving of remnants. J. N. Stockwell, Director of Law of the City of Cleveland, in a report to the Mayor and City Council of that city on the carrying out of the proposed Carnegie Avenue extension by the special assessment method, called attention to this aspect of the matter. (Proceedings of the City Council of Cleveland May 11, 1914, page 350, cited in Cushman's "Excess Condemnation.") Following is a quotation from Mr. Stockwell's report:

"No such benefits as half the purchase price of the land could possibly accrue to the abutting and adjacent property, by reason of the fact that the street opening would leave the adjacent lands in odd parcels, illly adapted to use. In many cases, narrow strips will abut lengthwise upon the proposed street, and any benefits which will accrue to these strips, or to the adjacent lots which now front upon the side streets, could be utilized only by the concentration of ownership of all the parcels in each square, so as to make possible their reallotment with frontage upon the proposed street. Any benefit, therefore, to these lands is contingent upon the ability of the owner of some one parcel to acquire other contiguous parcels; consequently assessments which the city might attempt to make upon this adjacent property, if of any considerable amount, I feel satisfied would be vigorously contested. I do

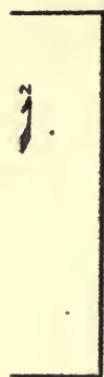
not venture to say what part of the fifty per cent assessment upon this abutting and adjacent land could be enforced, but it seems to me safe to say that no more than twenty-five per cent of the total cost could be held valid."



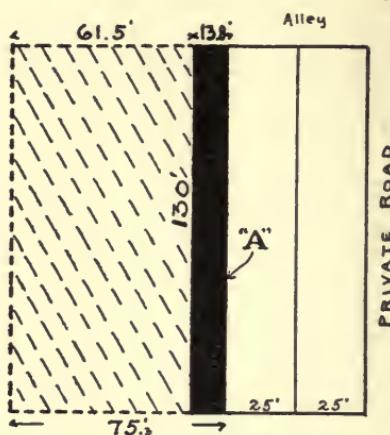
**TWELFTH STREET WIDENING**—Lot remnant with a frontage of 100 feet on Twelfth Street as widened and a depth of 12 feet. Before the street was widened, the lot had a depth of 54 feet.

Cleveland, unlike Chicago, had an alternative to the special assessment method—the power of excess condemnation. Mr. Stockwell pointed out that the cost to the city of making the improvement by the special assessment method, with remnants left in private hands, would be approximately \$425,000, while under excess condemnation procedure the net cost would be less than \$100,000.

Obviously, the leaving of unused lot areas with frontage on the newly widened streets and the prevention of what would normally be the most economic development of the adjoining lots also lowers the value of these properties and lessens the amount of taxes which the community would receive under conditions which would have promoted the proper improvement of the property.

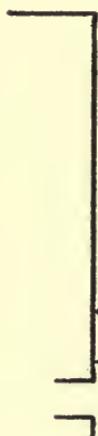


AVENUE

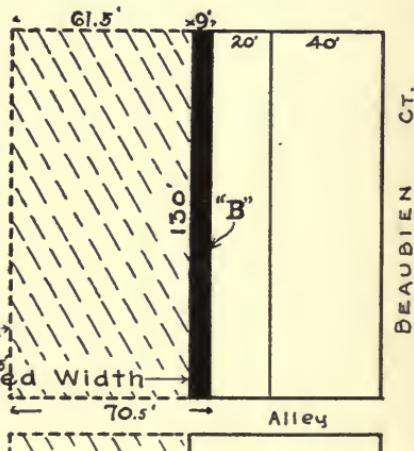


E. SOUTH

WATER ST.



MICHIGAN

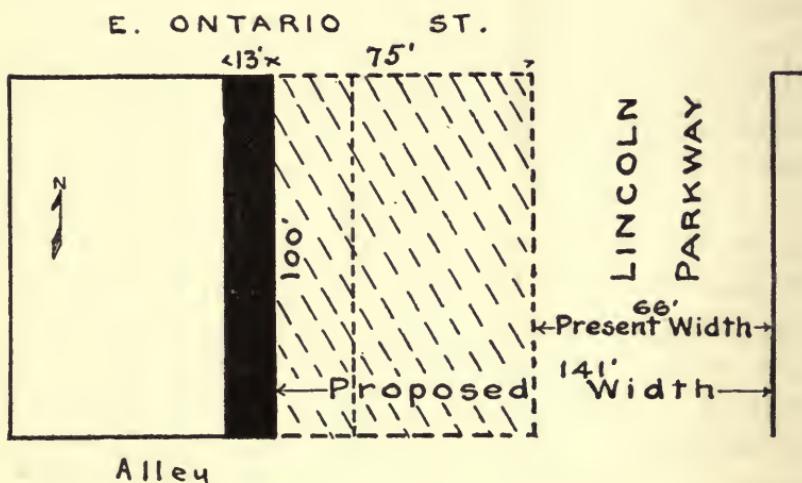


MICHIGAN AVENUE IMPROVEMENT—"A"—Lot remnant with a frontage of 130 feet on the street as widened and a depth of 13.8 feet. The lot originally had a depth of 75.3 feet. The street is to be widened by 61.5 feet and the lot will be reduced in depth to 13.8 feet.

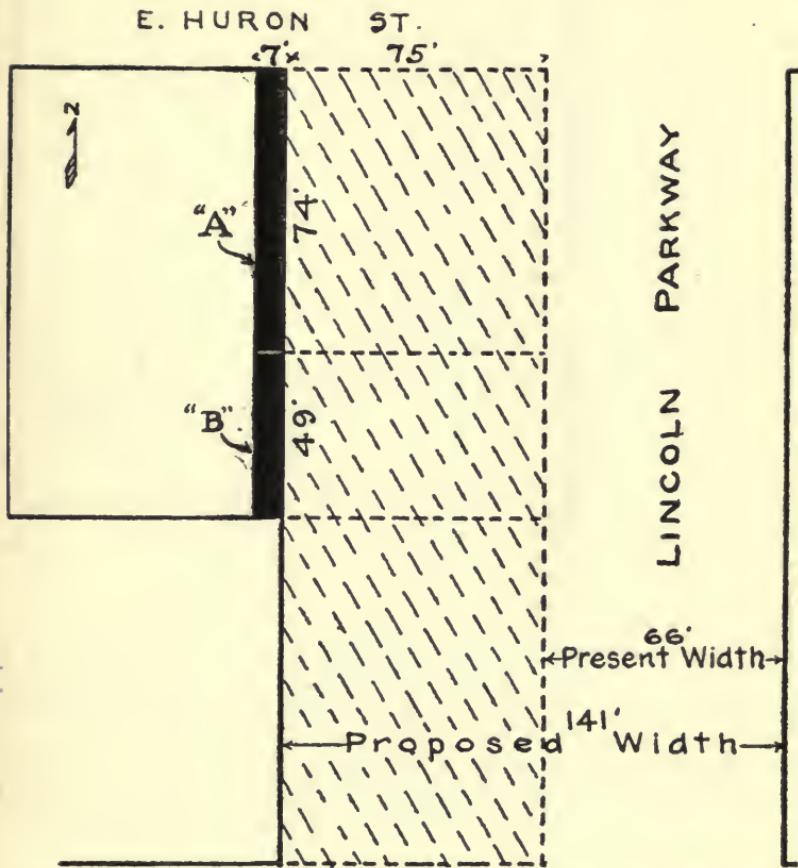
"B"—Similar lot remnant with a frontage of 130 feet on Michigan Avenue as widened and a depth of 9 feet. The street is to be widened 61.5 feet. The lot originally had a frontage of 130 feet and a depth of 70.5 feet.

## MICHIGAN AVENUE LOT REMNANTS

The remnant at the corner of Wabash Avenue and Twelfth Street, 3 feet in depth and 166 feet in length alongside the improved thoroughfare, furnishes a particularly flagrant instance of the injury to the public growing out of present methods of making such improvements. It is by no means exceptional, however. Whenever and wherever communities undertake street-widening projects instances similar in nature develop, unless the authorities carrying out the improvement possess the power of excess condemnation. The diagrams published in this report show other examples of lot remnants that will be left after the widening of Twelfth Street and of Michigan Avenue will have been completed. An examination of the diagrams relating to Michigan Avenue remnants shows lot areas, having in the aggregate 617 feet frontage out of a total of approximately 3,000 feet affected by the widening project (exclusive of plazas), that will have depths varying from 5 feet to 14 feet. Thus approximately one-fifth of the frontage on one side of the Michigan Avenue improvement, made at great expense in the furthering of the Chicago Plan, will be available only for billboards, small one-story shops, or other temporary or makeshift structures, or will be left as vacant property.

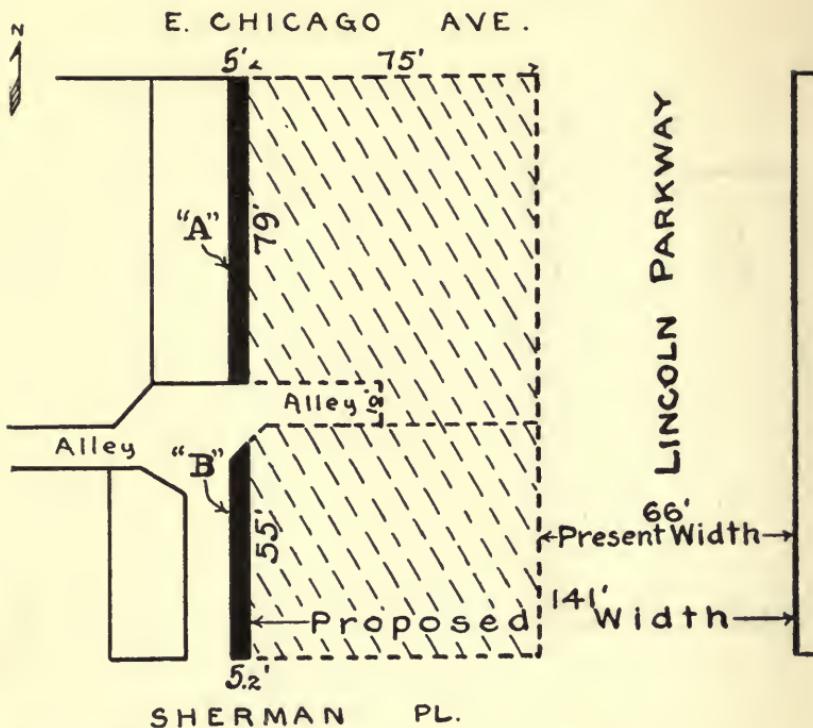


MICHIGAN AVENUE IMPROVEMENT—Lot remnant with a frontage of 100 feet on the street as widened and a depth of 13 feet. The present Lincoln Parkway is to be widened 75 feet to form the new boulevard. The entire lot extending back 50 feet from the west line of the present Lincoln Parkway will be taken, and in addition 25 feet of the adjacent lot to the west which now has a depth of 38 feet, leaving a remnant 13 feet in depth.



MICHIGAN AVENUE IMPROVEMENT—"A"—Lot remnant which will have a frontage of 74 feet on the widened thoroughfare and a depth of 7 feet. The lot originally had a depth of 82 feet, of which 75 feet is to be taken.

"B"—Adjoining is another lot remnant with a frontage of 49 feet and a depth of 7 feet. The lot originally extended west from the present Lincoln Parkway and had a depth of 82 feet, of which 75 feet is to be taken for the widening of the street.



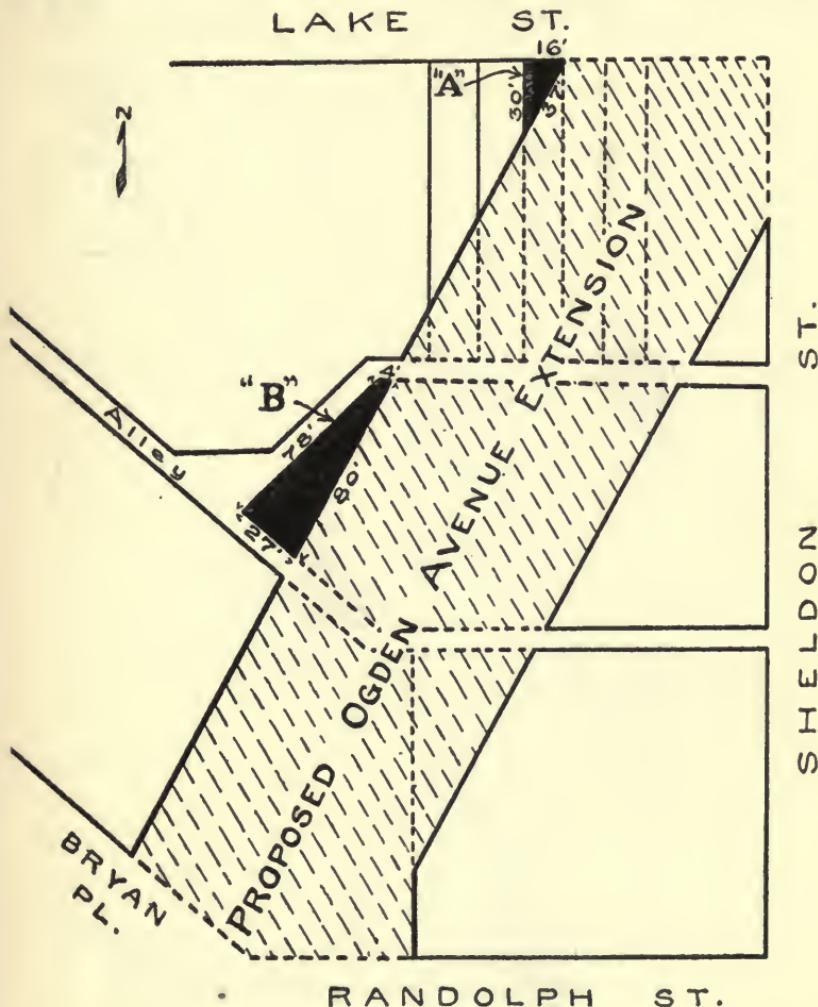
MICHIGAN AVENUE IMPROVEMENT—"A"—Lot remnant with a frontage of 79 feet on the widened thoroughfare and a depth of 5 feet. This property is located at the corner of Chicago Avenue and the new boulevard.

"B"—To the south across a 10-foot alley there will be another lot remnant with a frontage of 55 feet and a depth of 5.2 feet. To the west of this remnant property there is a 12-foot alley. The 5-foot remnant will lie between this alley and the new boulevard.

#### DEALING WITH DIAGONAL STREETS

When it comes to dealing with diagonal streets, the embarrassments from left-over remnants unsuitable for building purposes are likely to be even greater. The City of Chicago is planning to extend Ogden Avenue as a diagonal thoroughfare where no street now exists. The extension will run from Union Park on the west side to Lincoln Park in the north division of the city.

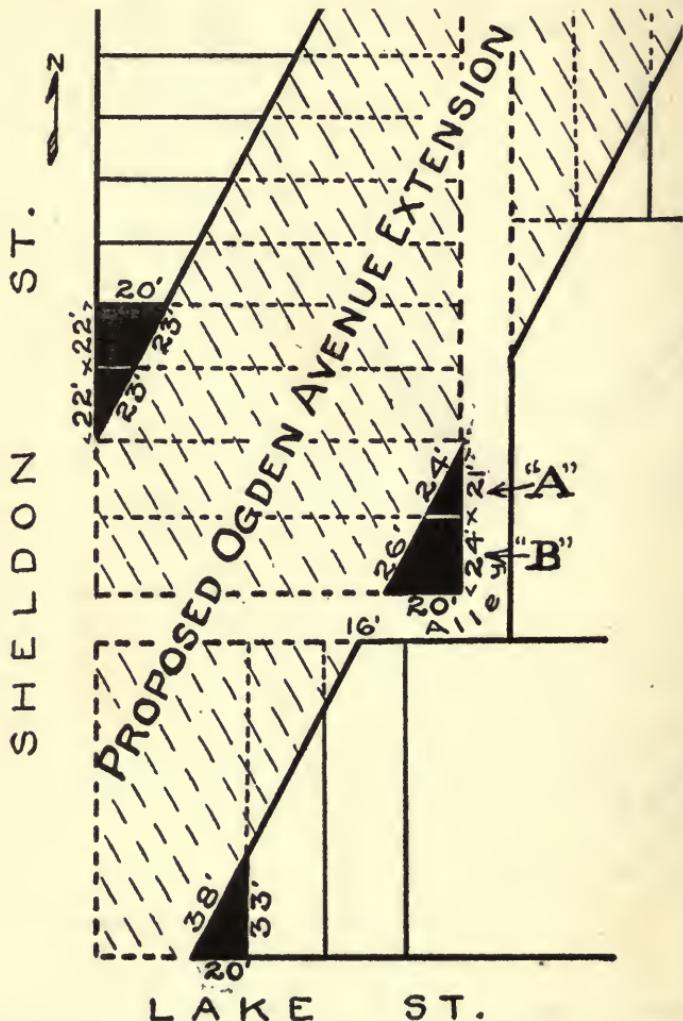
An examination of the lot areas to front on Ogden Avenue when that thoroughfare shall be cut through from



**PROPOSED OGDEN AVENUE EXTENSION—"A"—**Triangular lot remnant with a frontage of 37 feet on the proposed Ogden Avenue and a depth of 16 feet. This is a typical lot remnant left when a diagonal street is cut through blocks laid out on the usual rectangular plan.

**"B"—**Lot remnant with a frontage of 80 feet on the proposed Ogden Avenue and a depth ranging from 4 feet to 27 feet. This property will be bounded on one side by Ogden Avenue and on the other three sides by alleys which cannot be vacated, under present legal practice, so as to permit this property to be increased in area to form a suitable building lot.

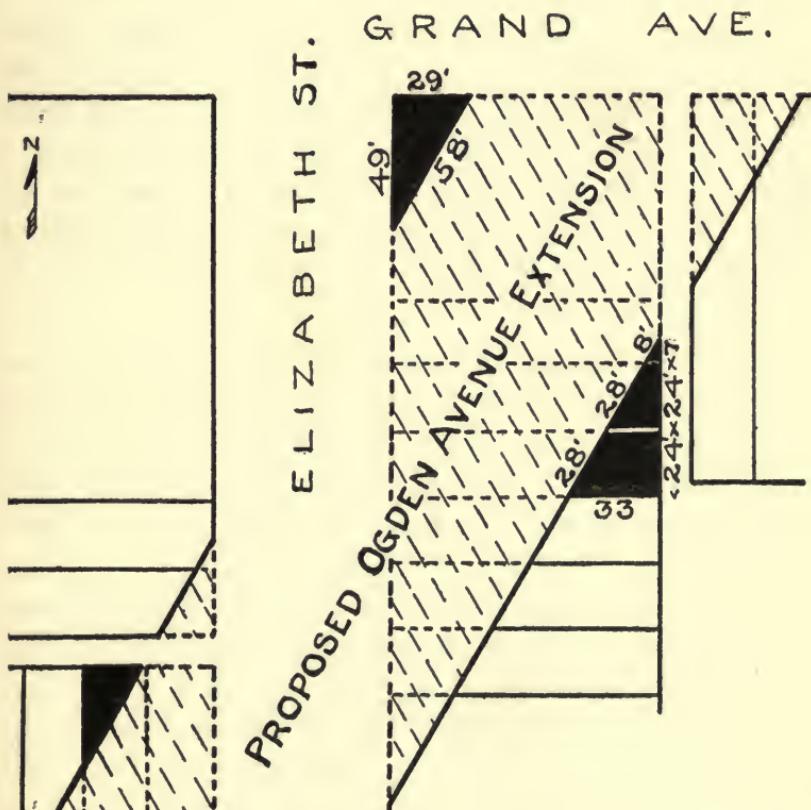
Randolph Street to Lincoln Park shows that there will be 93 lot remnants too small or too irregular in shape to be available for building purposes. These lots have a



**PROPOSED OGDEN AVENUE EXTENSION**—Lot remnants "A" and "B", with frontages of 24 feet and 26 feet, respectively, on the proposed Ogden Avenue, will be separated from the rest of the block by a 16-foot alley, which will bound the property on two sides. Special difficulty is encountered, when a diagonal street is cut through, in making the alley arrangement conform to a new street and lot layout.

frontage on the proposed Ogden Avenue of approximately 3,300 feet. In other words, this large frontage will be unavailable as sites for buildings so long as the remnants remain under ownership separate from that of adjoining property.

The line of Ogden Avenue has not as yet been definitely settled, but it is probable that the street as laid out by the survey already made will be adhered to in general.



**PROPOSED OGDEN AVENUE EXTENSION**—Lot remnant with a frontage of 58 feet on the proposed Ogden Avenue at the intersection of Elizabeth Street and Grand Avenue. The lot, as it now exists, has a frontage of 75 feet on Elizabeth Street and 98 feet on Grand Avenue.

The engineers are of the opinion, however, that the same damage to lot areas would result even if another line were decided upon.

The following examples are striking illustrations of lot remnants that will be left if the Ogden Avenue improvement shall be carried through on the lines of the present survey.

In the block between Lake Street and Fulton Street, Sheldon Street and Ada Street, a triangular plot of ground will remain, having a frontage of 50 feet on Ogden Avenue, containing 450 square feet. This area will be bounded on two sides by 16-foot alleys and on the other side by Ogden Avenue. (This is illustrated on page 28.) As under present conditions the alleys cannot be vacated as part of the condemnation proceedings, this plot seemingly will be of no use after the improvement is made.

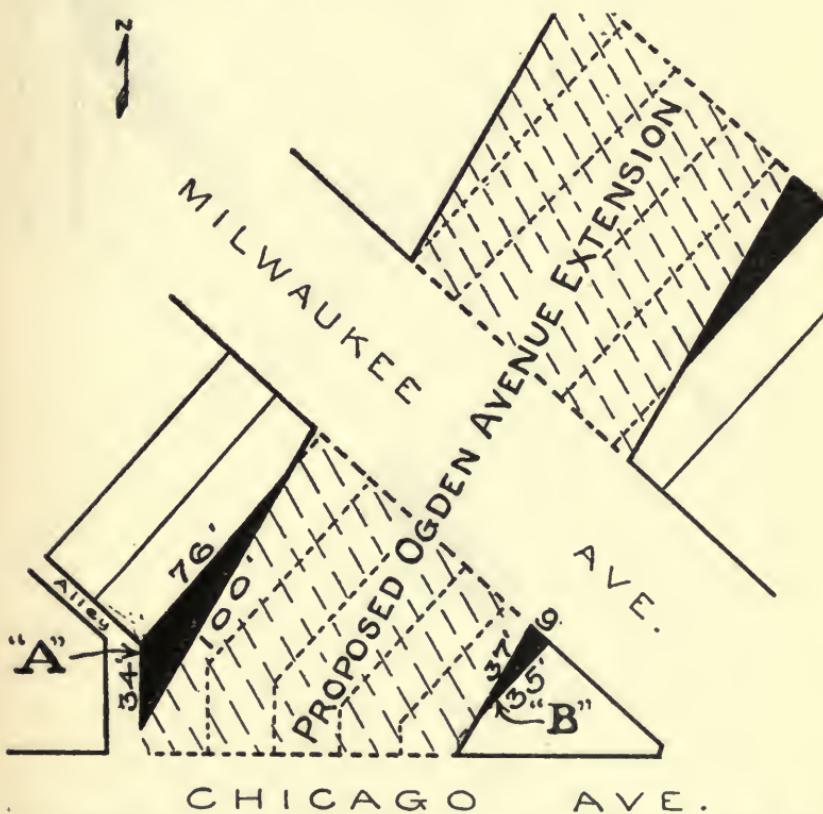
In the same block there will remain a triangular area (not shown in the drawing) with a frontage of 17 feet on Ogden Avenue. The other two sides are 9 feet and 16 feet, respectively. At no place will this parcel of land have a greater depth at right angles to Ogden Avenue than 8 feet.

In the block between Chicago Avenue and Milwaukee Avenue there will be an irregular strip having a frontage of 100 feet on Ogden Avenue, its two other dimensions being 76 feet and 34 feet. The maximum depth of the lot at right angles to Ogden Avenue will be 15 feet. This is shown on the drawing on the opposite page.

At the intersection of Ogden Avenue, Veeder Street, and Larrabee Street there will remain a triangular lot (not illustrated by map) with 27 feet frontage on Ogden Avenue, 18 feet on Veeder Street, and 31 feet on Larrabee Street.

Typical small lot remnants resulting from the widening of the street will have these dimensions in feet (the first figure given being the frontage on Ogden Avenue):

17 x 9 x 16	10 x 7 x 4
7 x 5 x 8	15 x 8 x 12
8 x 7 x 5	13 x 5 x 11
5 x 6 x 3	8 x 6 x 5
10 x 10 x 4	8 x 5 x 7
11 x 5 x 6	

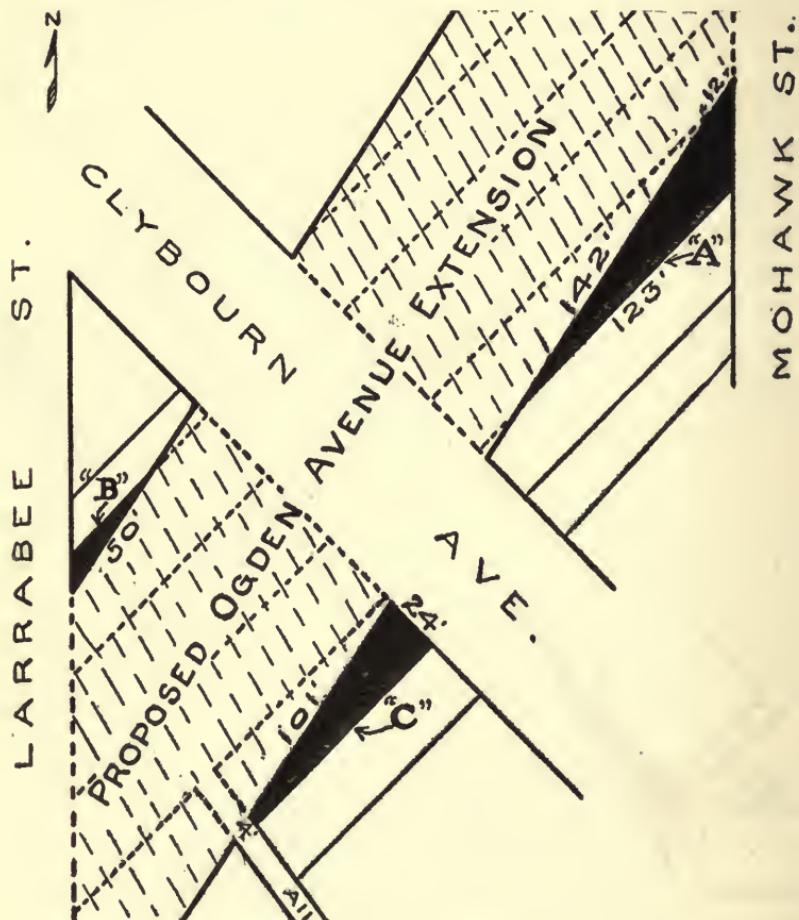


PROPOSED OGDEN AVENUE EXTENSION—"A"—Triangular lot remnant with a frontage of 100 feet on the proposed Ogden Avenue in the block between Chicago Avenue and Milwaukee Avenue. At its widest part the depth of the remnant will be only 15 feet.

"B"—On the other side of the proposed Ogden Avenue extension there will be a triangular lot remnant with a frontage of 37 feet on the proposed Ogden Avenue and a depth of 9 feet.

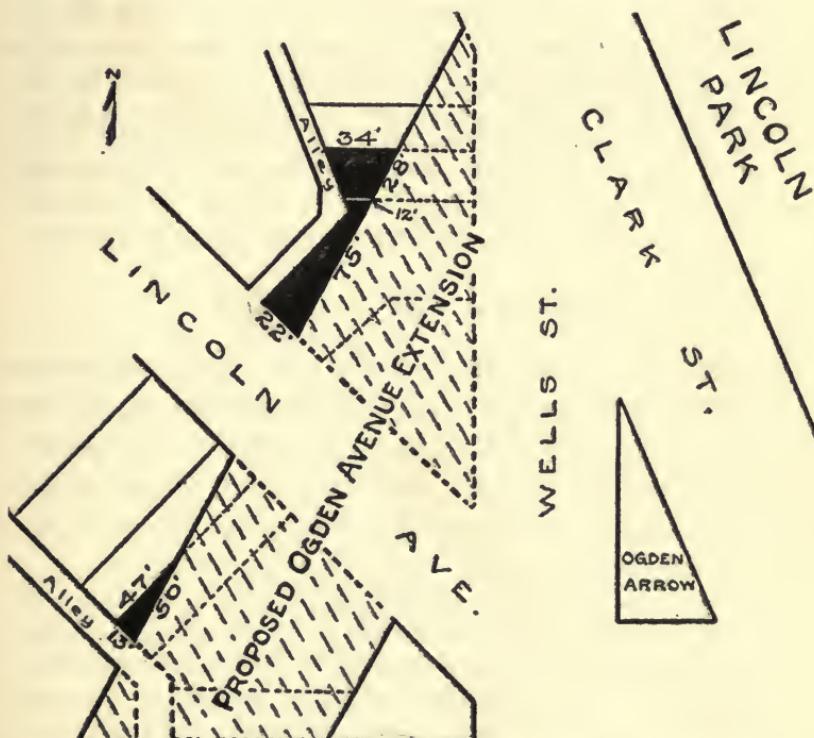
It will be noted that, if Ogden Avenue is cut through under present condemnation practice, the value for building purposes of nearly all the frontage on the new street between Milwaukee Avenue and Chicago Avenue will be practically destroyed.

Not only will there be many lots mutilated to such a degree as to make them unusable for ordinary building development, but the present lot layout which is based upon a rectangular street plan will be so disarranged that many lots will be very irregular in shape, and proper



**PROPOSED OGDEN AVENUE EXTENSION**—Lot remnants "A", "B", and "C" show irregular lot areas left by the extension of a diagonal street through a block bounded by another diagonal street, Clybourn Avenue, and by other streets which run according to a rectangular plan. All these remnants will have large frontage on Ogden Avenue and very little depth. In the case of remnant "A", 154 feet of frontage on the proposed Ogden Avenue will be practically useless, and in the case of remnant "C", 101 feet will be of little value.

and economical development will hardly be possible if each lot is under an individual owner's control. There will be many instances where a rearrangement of lot areas by the combining of several segments would obviously result in a better layout for building purposes. This can be seen by reference to the diagrams showing the present lot arrangement and the lot arrangement when the proposed Ogden Avenue improvement will have been made. Under the present condemnation law,



**PROPOSED OGDEN AVENUE EXTENSION**—This diagram shows irregular lot areas which will be left at the intersection of the proposed Ogden Avenue extension and Lincoln Avenue at Lincoln Park. Two parcels, one having a frontage of 75 feet on the proposed Ogden Avenue, and the other a frontage of 28 feet, both facing Lincoln Park, will be so small and of such irregular shape as to be practically useless for building development. The latter parcel will have a depth varying from 34 feet to 12 feet and the former, at its narrowest part, will have a depth of even less than 12 feet.

the combining of irregular segments cannot be accomplished except through negotiations between the individual owners concerned.

The Chicago Plan Commission, in a report of December 14, 1916, in discussing the Ogden Avenue improvement, indicated the special need of excess condemnation in connection with diagonal streets. It said:

"It is especially in diagonal cutting that an excess condemnation law would be beneficial, for the reason that the city would have the power to rearrange the lot lines so as to be normal to the street line and to combine the small remnants with adjacent property. In the absence of such a law, all that could be expected is that the remnants would undergo a gradual process of assimilation by private owners. Certain alleys would be vacated in order to render this possible, but it would at best be a slow process and not one which would assure the best kind of development."

#### SOME NEW YORK REMNANTS

The experience of New York City in street condemnation proceedings is especially pertinent in showing effects of cutting through diagonal streets under limitations upon the municipality to condemn property for street purposes. Some typical examples of plots left after improvements actually made in New York City are:

"At the corner of Elizabeth and Delancey Streets a triangular segment 9.10x1.51 feet in dimension, or 6.87 square feet in area; between Mulberry Street and Cleveland Place on Delancey Street, a segment 1.47x8.98, or 6.59 square feet in area; between Barclay and Vesey Streets on West Broadway, a segment 2.6x13.5, or 17.27 square feet in area; on Prince Street and Flatbush Avenue, one 4.3x10.3, or 21.96 square feet in area; on Lafayette Street and Flatbush Avenue, one 1.7x6.4, or 5.28 square feet in area; and on Lafayette and Pearl Streets, one 4.8x9.2, or 21.63 square feet in area." (Report on Excess Condemnation for Committee on Taxation.)

These conditions developed, of course, before the constitution of New York was changed in 1913 to authorize excess condemnation.

Many of the lot remnants along street improvements in New York City have remained vacant for as many as from 20 to 50 years after the street widening or opening had been made, because they were in themselves useless for building sites and apparently no satisfactory arrangement could be made between the owner of the remnant and the owner of the adjoining property for the uniting of the lot areas. As the Chicago Plan Commission points out, problems regarding similar conditions will have to be solved here when the diagonal street openings as set forth in the Chicago Plan are made.

#### WHAT EXPERIENCE SHOWS

Under existing law an Illinois municipality is permitted to take only such property as is absolutely required for street purposes. The city cannot deprive an owner of his title to property against his will, even if it compensates him in money, unless, strictly speaking, the property is required for the public use, *i. e.*, the street; and the city cannot acquire any additional property.

Experience in the widening of Michigan Avenue and Twelfth Street, the two initial projects in the carrying out of the Chicago Plan, shows not only that distorted and unusable small areas or remnants are left, when a street improvement of this character is made, but also that the municipality, having no control over the character of building development along the line of the new street, may find that the usefulness and the value of the improvement, because of the lack of beauty and symmetry in the buildings erected along the new thorough-

fare, may be greatly lessened, although the community has been put to large expense to make the street adjustment.

Only a beginning, however, has been made toward carrying out the Chicago Plan. Already there is urgent need for opening up other thoroughfares where the present street scheme fails to give convenient access from one section of the city to another.

If in future projects the difficulties are to be avoided which the City has met in the building of the Michigan Avenue boulevard link and the widening of Twelfth Street, the City must be given a freer hand so that it can deal with this problem, rearranging the lots in a block to conform to the new street, thus making them all available for building purposes. It must secure control over building improvements fronting on the newly widened or opened street, in order that the desired view, appearance, and economic importance of the new thoroughfare may be preserved and the full benefit of the improvement realized. Many cities in this country and abroad have used the power of excess condemnation to secure these desirable ends.

Excess condemnation means the taking, in connection with a public improvement, of more land than is needed for the precise, narrow purpose of the improvement. In connection with street-widening projects, the possession of this power would enable the City to condemn, not only property needed for street purposes, but also additional land along the thoroughfare, so that suitable building lots can be formed, and to sell under reasonable restrictions the excess property not required for direct public use. Under this power, the City could determine the kind of building improvements to be erected along

the line of a new street, so as to preserve its appearance and other essential features, and the community might perhaps help to recoup itself for the cost of the improvement through the sale of the excess property after the land had increased in value because of the improvement.

If the City of Chicago were given the power of excess condemnation it would have authority to acquire remnants, and would be in a position to unite such lot areas with adjoining property into lots suitable as sites for buildings which would be a credit to the street. Even if the City were allowed to condemn, in addition to land required for the street, only lot remnants unsuitable in themselves for building development, it would be able at the very least to put such land to inoffensive uses, such as parking, etc., instead of allowing it to remain in the hands of private owners, who, if self-interest so dictates, may leave it vacant, strewn with refuse, or use it for billboards or other unsightly purposes, depreciating adjoining property and injuring the good name of the street.

When remnants are left it is essential, if the street is to be developed speedily, that such remnants be united with adjoining property under a single ownership so that the combined plots can be made suitable for building sites. Leaving remnants in the hands of private owners may operate to give such owners certain speculative or strategic values out of proportion to the area or frontage controlled, and, because each owner wishes to capitalize his own special position, the uniting of adjoining areas required to form a suitable building lot may be delayed, hard feeling between the owners may result, and the development of the street may be indefinitely postponed. Herbert S. Swan, in a report on Excess Condem-

nation for the Committee on Taxation of the City of New York, has indicated the results which may reasonably follow under such conditions. Mr. Swan said:

"Since each parcel, by the mere fact of its adjacency, commands the values of the neighboring plots, every owner becomes, as it were, a monopolist. Knowing the strategic position of his own remnant and that its union with any other would immediately, without any effort on his own part, result in a greater value than the sum of the two separately, each proprietor overestimates the true importance of his own plot and shrewdly bargains to get not only the proportion that his own parcel contributes to this increased value, but also as much more as he is able to wring from the purchaser. Not succeeding in his designs by legitimate means, the owner, if he be unscrupulous, sometimes erects so objectionable a building on his land or puts the land to such a use as practically to coerce the adjoining owner into either purchasing it at an exorbitant price or selling his own at a great sacrifice. The limited power of eminent domain, heretofore existing, has often served to make the ultimate development of the city dependent upon petty jugglery."

The Massachusetts Committee on Eminent Domain (House Document 288, Leg. Session 1904, page 5) comments thus on such conditions in Boston:

"It often happens that the owners of these remnants, desirous of deriving some income, erect temporary structures, unsuited for proper habitation or occupancy. Such structures are frequently made intentionally objectionable, both in appearance and in the character of their occupancy, for the purpose of compelling the purchase of the remnants at exorbitant prices. The result is that a new thoroughfare, which should be an ornament to the city, is frequently for a long period after its construction disfigured by unsightly and unwholesome structures to the positive detriment of the public interests. This

condition, which seems inevitable under the present system, may operate to prevent the undertaking of much needed street improvements."

The community is not concerned in the private business dealings of one landowner with another. Carrying out of important city planning projects and proper building development along a new thoroughfare should not be hampered or delayed to the economic and esthetic loss of the community, while one property owner is attempting to obtain some financial advantage over another.

Permitting the City to acquire the remnant and unite it with adjacent property, thus forming lots suitable in size and shape for proper building improvement, at the fair market value fixed for property acquired and actually needed for street purposes, without blackmail or without speculative profits for one owner at the expense of another, would be possible through the power of excess condemnation. The building of objectionable structures or the practice of leaving lots with frontage on a newly opened or widened street as unsightly vacant areas for blackmail or speculative purposes could be done away with, and permanent building development insured.

That beautiful surroundings of public places play an important part in our civic life is shown by the growing popular support of expenditures for streets and parkways possessing beauty as well as utility. As Mr. Andrew Wright Crawford, former solicitor for the City of Philadelphia, and the secretary of the City Parks Association of that city, points out, the municipality cannot safeguard these civic investments because of inability to control the surroundings of an important avenue or boulevard or other public place. Mr. Crawford says: "A park surrounded by ramshackle buildings is not a beau-

tiful place unless it is so large that these eyesores can be 'planted out,' but in the case of a parkway, playground, or small city park, the architecture of the abutting buildings cannot be planted out. The height and general design of their facades and the use to which they are put should be put under the control of the public \* \* \* if the park, parkway, or playground is to be really beautiful." (Brief, Constitutionality of Excess Condemnation, Senate Document No. 422, 61st Congress, Second Session.)

It is to the financial interest of property owners generally along the line of a new street improvement that building development be appropriate. From the standpoint of a municipality which has made a heavy investment in a parkway or a through traffic street, loss and waste due to unsightliness are deplorable.

#### POLICE POWER INEFFECTIVE

There are but two means of control of building conditions: one, the police power; two, the power of condemnation.

The police power has been limited in its application so that the City is left without adequate authority to prevent disfigurement of public places through this means. The courts generally have refused to give their sanction to ordinances based solely upon esthetic considerations as not being directly conducive to the health, safety, or convenience of the community.

Mr. Walter L. Fisher, in an opinion given in 1909 on the legal aspects of the Chicago Plan (*Plan of Chicago*, page 140) says:

"The police power of the state is not available for merely esthetic purposes, and is quite inadequate

to the solution of this special problem. Owners of land, under existing constitutional limitations, can with impunity lease to advertising companies the right to erect safely constructed billboards and paint the sides and roofs of barns with any advertisements not injurious to morals or contrary to public decency; nor can vulgarities which merely offend the sight and shock temperamental susceptibilities be construed as breaches of decency. 'It is believed,' says a writer in the Harvard Law Review, 'that both on theoretical and practical grounds the law must be taken as settled that, although public esthetic ends may be effectuated by statute or ordinance through the exercise of eminent domain, the same object may not be accomplished by legislation under the police power without compensation.'

"In the case of *Chicago v. Gunning System*, 214 Ill. 628, the Supreme Court of Illinois declared that the Legislature, by conferring authority upon the city council to abate nuisances and enforce police ordinances, had given that body ample power to regulate, within reasonable limits, the construction of billboards upon private property; but the court nevertheless condemned a particular ordinance for the reason, among others, that the purpose of certain sections seemed 'to be mainly sentimental and to prevent sights which may be offensive to the esthetic sensibilities of certain individuals residing in or passing through the vicinity of the billboards.' "

Furthermore, as Prof. Cushman of the University of Illinois, in his work on Excess Condemnation, page 90, points out, the use of police power to secure beautiful surroundings for new thoroughfares and parkways in cities would not be wholly effective even if it could be invoked for that purpose. Prof. Cushman says:

"A much more serious objection to the use of police power for these purposes lies in the fact that it does not adequately meet the whole situation. Without discounting its effectiveness and value, as far as it goes, it is fair to say that the results it can produce are, at best, negative and not positive. It may pre-

vent the erection of structures which are positively objectionable, but is unable to exercise any direct and constructive power to compel the property adjoining an improvement to be used for the purposes which are most appropriate and beneficial. In a majority of cases, the negative power which the city might thus exercise through its police power would perhaps be adequate for the city's needs. There would be many instances, however, in which these negative measures would not afford an adequate degree of protection."

#### THE REMEDY IS EXCESS CONDEMNATION

The only effective means of control, then, which the municipality has is through the acquisition, under the power of eminent domain, of the title to property abutting on the new street or an easement which would permit building restrictions to be imposed. This is excess condemnation.

If the municipality were given the power to acquire additional property abutting on a new street or parkway and then permitted to resell the land with restrictions as to its use after the street improvements were made, building development would be under the control of the municipality and the full benefits of the new parkway or street could be realized; or in certain cases the municipality could acquire not the full title to the abutting property but an easement, which probably would be less expensive to the municipality. In many cases this latter method would be effective. It is open, though, to the same objection as is the use of the police power, because in the main it would provide only a means of negative control; that is, it could prevent the property being put to a use which was offensive or injurious, but it would not provide a means for developing street surroundings

and thoroughfare together, in conformity with architectural designs for the improvement of the street as a whole.

The more effective method of preventing the disfigurement of a new thoroughfare is through the acquisition by the municipality of title in fee to surplus property.

#### WOULD REDUCE LITIGATION EXPENSES

Excess condemnation should reduce the expense of litigation and the cost of acquiring property by eminent domain proceedings. It is apparent that it is much easier for a jury to determine the value of a given lot with its improvements than to try to determine what the value of a portion of the lot would be, the damage to the part of the building taken, the amount of money it would cost to reconstruct it after a portion of it were cut off, and to what extent the value of the property would increase or decrease after the improvement were made. All of these things must be taken into consideration when the City acquires only the portion of a lot required for street purposes and permits the owner to retain the remainder. Many of these factors of value are uncertain, and the jury, in order not to do injustice to an owner, may allow even higher awards against the City than if all the property were taken. In any event, the cost to the City, all items considered, is more than it would be under simpler conditions. At present it is necessary to employ real estate experts, architects, and building experts to study these complex questions and testify in court as to cost of tearing down a portion of a building, its reconstruction after a street improvement has been made, the uses to which it could be put in its new construction, considering its reduced size, and the character of the new

street. These men must be employed by the City on the one hand and by the property owner on the other, and their fees add greatly to the expense of conducting condemnation proceedings and prolong the time required to prepare the case and try it in court. In the Michigan Avenue widening case the City spent for real estate experts, architects, building experts, and special attorneys over \$600,000 and the property owners who fought the case paid to similar experts a large amount. It is certain that if the City had been able to acquire parcels of property as a whole, with their improvements, a considerable portion of this expense would have been saved.

Furthermore, long drawn out litigation is a heavy community loss.

The Twelfth Street widening project was started by the Board of Local Improvements in 1909, and in April, 1911, the suit was filed in court which was notice that such improvements as might be made after that date by an owner of property on the south side of the street which was to be widened would not be considered when the awards for damages to property should be made. The court proceedings were concluded in 1917, although the work of widening, removing buildings, etc., was begun in 1916. It is only recently that the work of paving, relaying car tracks, etc., has been finished.

#### COSTLY THEORETICAL DAMAGES

The arbitrary and rigid limitations upon the power of the City to condemn property may operate to prevent the municipality from acquiring property for public purposes and from making the necessary lot and building readjustments in a practical and sensible way. It is frequently possible for the City to condemn a portion of a lot occupied by a building and leave sufficient space so

that the building instead of having to be wrecked, as is contemplated by the theory of the present condemnation law, might be kept intact and moved to the remainder of the lot not needed for street purposes. The present law of condemnation, however, does not permit the City to do this unless it gives judgment for all the theoretical loss which may be sustained if a portion of the building were wrecked, even though it is not necessary in carrying out the street widening plan to damage the building.

A case in point is as follows: At the corner of North Avenue and Cicero Avenue the City wished to widen the thoroughfare by 17 feet. A lot, a portion of which was taken for the purpose of the street widening, was occupied to the extent of a little more than half its area by a building which was located on the front part of the lot. Under the law of eminent domain, the City theoretically was required to condemn 17 feet of the front part of the lot and tear down that portion of the building occupying the 17-foot strip. It was possible, however, to move the building back 17 feet from the original lot line, there being sufficient space at the rear of the building, thus avoiding its partial demolition. In this case the building was moved. The City was assessed, however, for compensation for the value of the land taken, for the loss which would have been sustained if 17 feet of the front part of the building had been cut off, and also for the estimated cost of the erection of a new front for the building. These amounts were fixed at \$8,000. After the verdict was given, the City, in order to avoid the expense of wrecking the front 17 feet of the building, agreed with the owner to have him move his building back to the rear part of the lot. The expense of moving the building back to the rear part of the lot was approximately \$2,000, but the City was required to pay \$8,000. If the

City had had the power of excess condemnation it could have condemned the entire building and lot, moved the building back, and then have resold the property, presumably giving the preference of purchase to the original owner, thus securing, at considerably less expense, the same result which has been effected under the present law.

Such situations developed on a large scale in connection with the improvement of Twelfth Street. The City, after paying damages for theoretical injury to buildings, permitted the owners to move their structures back to the new lot line in order to save the expense of wrecking the buildings. In widening Twelfth Street the City paid thousands of dollars for theoretical damage to buildings which never occurred.

#### THE SANITARY ASPECT

There is also a sanitary aspect to the matter. In the widening of Twelfth Street, 42 feet were taken from the front part of lots in some stretches. The original lots varied from 100 to 125 feet in depth, and after the widening was effected, from approximately 60 feet to 85 feet in depth. On many of the lots were structures occupying approximately two-thirds of the original lot areas. Many of these buildings were tenement houses. When the City permitted the owners to move their buildings back to the new lot line, the percentage of lot occupancy was increased from about 65 per cent to almost 100 per cent, and the light and air standards in the areas affected were considerably reduced. Under individual ownership it was difficult to carry out a comprehensive plan to improve housing conditions. In order to secure good housing conditions it is necessary for one lot to contribute to the light and air of adjacent property. The City could

not deal effectively, under the circumstances, with many different kinds of existing buildings and with many individual owners, and determine what each lot should contribute to the light and air of the adjacent lot. If it had had the power of excess condemnation, however, it could have secured either title or an easement to all of the property involved and then could have made such changes as would inure to the benefit of the entire area. Instead of a lowering of sanitary conditions and standards, the City would have been in a position to deal effectively with housing conditions in a congested portion of the city.

#### RECOUPMENT FROM RESALES

The making of profit from the resale of lands acquired in connection with public improvements has been an important aim of many foreign cities in resorting to excess condemnation. The policy of excess condemnation is urged upon American cities primarily for other reasons, the idea of recoupment being secondary, if favored at all. Recoupment is especially emphasized in communities that make little application of the special assessment principle. Chicago needs the power of excess condemnation primarily to enable it to deal satisfactorily with the problem of remnants and to promote harmonious development in keeping with the dignity of an improvement created at heavy expense to the public. The City should be very slow to embark upon what might prove to be uncertain real estate speculations. However, there may be instances in which the City might properly seek, as an incident to a project undertaken for public reasons, to recover for the public to an extent that would be impossible through special assessment methods some of the values created by an improvement. This is especially true where the character of a neighborhood is radically

changed so that the increment in land values is both rapid and large. City planning projects are likely to be very expensive, especially in congested portions of the city. These projects can be pushed more rapidly if values created by them can be utilized to keep down the cost to the taxpayers. The power should exist to realize profits from the resale of lands acquired by condemnation proceedings in furtherance of the broad purpose of an improvement, but the power should be exercised conservatively.

#### FOR A CONSTITUTIONAL CONVENTION

In the Plan of Chicago, published in 1909, attention was directed to the need of excess condemnation powers if the City was to escape just such embarrassments as it has actually encountered in the execution of the Twelfth Street and Michigan Avenue projects. Yet little effort has been put forth to secure the needed powers. Since the publication of the Plan of Chicago, which gave a great impetus to city planning movements throughout the country, the constitutions of Massachusetts, Ohio, Wisconsin, New York, and Rhode Island have been amended so as to authorize state legislatures to confer excess condemnation powers on cities and other governing agencies. Chicago and Illinois remain in the backward class.

If the recommendations of the original Plan of Chicago with reference to excess condemnation had been carried out, the abuses to which attention is directed in this report, in connection with the projects for the widening of Twelfth Street and Michigan Avenue and the extension of Ogden Avenue, could have been, or could be, avoided.

When the Plan of Chicago was issued, it was thought that the needed powers of excess condemnation might be conferred by statute. Court decisions in other states since that time, however, have indicated the desirability of paving the way for legislative action by appropriate constitutional changes, although the issue has not been raised in the courts of this commonwealth.

Illinois is to vote next November upon the question of calling a convention to revise the Constitution. The need of cities for excess condemnation powers, in order to prevent a recurrence in connection with future public improvements of the absurd remnant situations to which attention is directed in this report, constitutes an additional important reason why the vote upon the constitutional convention proposition should be in the affirmative.

#### **CONDEMNATION SHOULD CARRY FULL TITLE**

In changing the Constitution so as to authorize the Legislature to confer upon governing agencies the power of excess condemnation, provision should be made for giving cities the absolute fee to property condemned and not merely an easement for public use. At present, when a municipality condemns property for street, school, park, or other public purposes, it does not acquire the fee but only an easement or limited right in the property, and that property reverts to the original owner or his heirs in case the municipality fails to make continued use of it for the specific purpose for which it was acquired. If the City in good faith takes property for a public purpose, paying the full fee value thereof, and later finds it no longer needed for that purpose, the City should have the right to treat the property as a public asset and change its use or sell it.

In this connection, the subject of railroad property also deserves consideration. When a railroad company takes property by condemnation proceedings, and pays the full value therefor, it secures only the right to use the property for railroad purposes. Whenever that use is abandoned, the property reverts to the original owners or their heirs. There is a public interest in this matter in connection with city planning. One of the aims of Chicago city planners is to secure a rearrangement of railroad terminals in Chicago, which would permit of the abandonment for railroad use of considerable railroad property. In so far as this property may have been acquired in the first instance by condemnation proceedings, under the Illinois Constitution of 1870, abandonment of its railroad use, without the consent of the original owners or their heirs, would mean the loss of the property to the railroads. As to the future, it would seem that the Constitution should provide that the railroads, after having made use of property in good faith for railroad purposes for a specified number of years, should retain title to the property and have the power to sell it and retain the proceeds in case the City authorities agree that it is no longer needed for railroad purposes.

## A SURVEY OF THE EXCESS CONDEMNATION MOVEMENT

While excess condemnation is generally considered a new proposal in American cities, it was given its first trial in the United States. New York City exercised the power of excess condemnation beginning in 1812 and Charleston, S. C., also employed this method about the same time. However, these laws were little used because they were early held invalid by the courts, and it was not until recently that American cities have again asked for this power. The greater interest in city planning during the past 15 years in this country has stimulated interest in the subject, and has shown the need for this power. Since 1904 there have been several constitutional amendments adopted and enabling laws passed by the various states.

Excess condemnation, however, has had long and extensive use by European cities, especially London, Paris, and Brussels. Canadian cities, notably Montreal, have been highly successful in carrying out projects for the adjustment of the street layout through the power of excess condemnation. The City of London was granted this power in 1845; the City of Brussels in 1867, and it was used by the City of Paris from 1852 to 1869 when many of the beautiful thoroughfares of that city were built.

While the legislation in London and Paris was originally designed to give these cities the power to acquire only remnants, excess condemnation early was used more as a financial measure for the purpose of recouping a portion or all of the cost of the improvement, because the practice of levying on abutting property owners special assessments to pay for the cost of improvement has not

been so generally accepted and used by European cities as by American municipalities.

From the financial standpoint, it is doubtful whether European cities have been able to secure as effective results in defraying the cost of street improvements by acquiring surplus lands through condemnation proceedings and then selling them after the improvement has been made as Chicago and other American cities have been able to secure by the special assessment method. However, in some of the recent larger improvements the London County Council has combined the special assessment system with excess condemnation with very satisfactory results.

It has been only in isolated cases that a profit has been made by municipalities in street improvement undertakings through the acquisition of surplus lands and their resale, although in many cases the municipality has been able to recover through sales a considerable portion of the cost of an improvement, the burden of which would otherwise have fallen wholly upon the taxpayers. In London up to 1913 the greater city had exercised the power of excess condemnation in 90 street proceedings. The aggregate cost of these improvements, including the cost of surplus lands, was approximately \$121,000,000, while the public authorities were able to realize through the sale of land and through leases nearly \$50,000,000 (including the value of land undisposed of), making the net cost approximately \$71,000,000. In one undertaking, the opening of Northumberland Avenue, the municipality made a clear profit of almost \$600,000, and in the building of the Kingsway from Holborn to the Strand it has been stated that the final cost of the improvement was almost \$5,000,000 less than was estimated would have

been the cost if only the property absolutely required for street purposes had been acquired. The financial results to the City of Paris during the period from 1852 to 1869 were not so satisfactory. The city built about 56 miles of new streets during this period, paying damages for land and buildings acquired amounting to \$259,400,000. At the end of that period it had sold part of its excess lands for \$51,800,000, and still had on hand property valued at over \$14,000,000.

The prices paid by both London and Paris for property acquired through condemnation, it is generally agreed, were excessive. In Paris the verdicts of juries were in many cases out of all proportion to the actual value of the property, while in London the landowner was allowed 10 per cent in addition to a fair market price as an offset to his loss of future increment of value in the property and as compensation for expense incurred by the owner in the reinvestment of his funds. Another large item of expense because of these excessive awards was caused by the practice of erecting buildings and establishing businesses as soon as an improvement was contemplated, so that a profit could be made when these improvements had to be condemned for the new street. In Chicago there is no allowance for building improvements made after the petition has been filed in court, but the municipality must pay for improvements made prior to that time even if they were put in after the City had decided to make the improvement.

In Belgium the excess condemnation act was passed for the purpose of improving the sanitary conditions or protecting the surroundings of public improvements, and in this respect the law has been very successful. Brussels has not been as successful as other Belgian cities financially because of the highly speculative policy adopted by

that city, but other Belgian cities have been able to carry out their improvements without financial loss and in many cases at a profit. With the use of the method of excess condemnation, the main section of Brussels was reconstructed from a highly congested area where the streets were narrow and ill-adapted for traffic, and sanitary conditions generally bad, into a beautiful and valuable business center for a modern city. Belgian cities generally have made effective use of excess condemnation in securing beautiful and fitting surroundings for new thoroughfares and public places.

In two large recent improvements London has used the power of excess condemnation for the purpose of controlling the development of the abutting property along new thoroughfares. On both the Kingsway and the Mall improvements restrictions were imposed to secure harmonious architectural effects and appropriate use of new buildings erected. Many of the famous boulevards of Paris were built by Haussmann during the period of 1852-1869, and excess condemnation was employed to obtain surroundings which were in keeping with these thoroughfares.

The experience of Montreal in using excess condemnation has been highly successful, even from the financial point of view. In the three projects carried out before the war a profit was made by the municipality in each case. In the opening of the St. Lawrence Boulevard the profit was over \$29,000. Just before the outbreak of the war the City of Montreal acquired a large amount of property in connection with the building of St. Josephus Boulevard, but this property has not been disposed of because the market at this time is not favorable on account of war conditions. Other Canadian cities, such as Halifax and Toronto, have used the power of excess con-

demnation to deal with small remnants left after an improvement is made, but have not used it in such extensive manner as has Montreal.

While a number of American states have secured constitutional amendments and enabling legislation permitting cities to exercise the power of excess condemnation, that power has been used only to a very limited extent by American municipalities. Reference has been made to the early beginnings of the use of excess condemnation, but practically nothing was done except in isolated cases until 1903, when a legislative commission of Massachusetts made a report on the subject. As a result, the Massachusetts Remnants Act of 1904 was passed which permitted municipalities to take title to any remnants left which in themselves were unsuitable as building sites. An act was passed by Ohio in the same year, and this was followed by legislation in Virginia, Connecticut, Pennsylvania, Maryland, Wisconsin, and New York. The legislation in some of the states was much broader than in Massachusetts. The Pennsylvania statute, for example, permitted a city to take excess property within 200 feet of the boundary line of a public park, parkway, or playground, for the purpose of protecting such improvements. But statutory legislation was found to be inadequate unless preceded by constitutional amendments permitting the practice, for the courts soon held such legislation invalid or so construed acts as to limit their application, and extensive use therefore was not possible. The Massachusetts Remnants Act of 1904 was sustained, to be sure, but the Supreme Court, in opinions given the legislature, said even that act stretched the constitution, and it refused to approve excess condemnation on broader lines under the constitution as it then stood. The broad enactments on the subject by the legislature of Pennsyl-

vania were overturned by the Supreme Court of that state.

The first constitutional amendment was adopted by Massachusetts in 1911, and it was followed by amendments in Ohio and Wisconsin in 1912, New York in 1913, and Rhode Island in 1916. These constitutional amendments provide, generally speaking, for taking property in excess of actual needs sufficient to form suitable building lots abutting upon a public improvement, and permit the sale of such surplus property with or without restrictions after the improvement is made, so that public control of the surroundings of a new street may be secured.

Since the constitutional amendment was adopted in Massachusetts, a number of special acts have been passed granting cities power to condemn additional land. In only one case, however, has an improvement been carried out in this way, namely, the widening of Belmont Street in the City of Worcester, but this work has not as yet been completed and figures are not available as to the financial results. The City of Springfield, Massachusetts, has also carried out an improvement, but this was done under the authority of the Remnants Act of 1904. The City of Philadelphia used the act of 1907 in the building of the Fairmount Avenue parkway, acquiring land on both sides of the street, then reselling the property with restrictions as to use. In the course of the proceeding, however, the Philadelphia act was held unconstitutional in the case of the *Pennsylvania Mutual Life Insurance Co. v. Philadelphia*, and the municipality was prevented from using this power further. It has, nevertheless, purchased additional property along the line of the improvement, with the object of protecting the surroundings of the new parkway. While Philadelphia has been unable to acquire sufficient property to exercise the neces-

sary control over abutting properties, the city proposes to build an Art Museum, Library Building, and Convention Hall fronting on the new parkway, and thus set the architectural standard for the new street.

The City of New York has been given the power of excess condemnation by enabling legislation passed in 1915 and 1916, but as yet no use has been made of this authority.

There are few data based upon actual experience indicating possible financial results of excess condemnation under American conditions, but an exhaustive report made for the City of Cleveland in the proposed extension of Carnegie Avenue is of value in this connection as showing probable results which might have been attained by the City of Cleveland had it carried out this plan. The proposed Carnegie Avenue extension, which has not as yet been made, was to be divided physically into two sections; one, between Fourteenth and Twenty-second Streets, opening up a new thoroughfare through the downtown district, while the second part of the extension from East Eighty-ninth Street to East One Hundredth Street was to run through a residential neighborhood where there would be little change in the kind of use of abutting property after the improvement should be made. In section one the cost of the property to be destroyed for the actual widening of the street and the consequential damages which the city would be required to pay was estimated at \$347,565. That would be the cost to the municipality for this portion of the new street if it were permitted to condemn only property actually required for street purposes. The Appraisal Company estimated an enhancement in land values of property not required for street purposes amounting to \$437,609; so that the city would make a profit of \$90,044, instead of having a loss

of \$347,565. In the other part of the street, the extent of property to be destroyed, land taken, and consequential damages to property not to be taken were estimated at \$204,910, and the enhancement in land values in surplus lands acquired at \$126,989; so that the net cost would be reduced from \$204,910 to \$77,921. On the entire improvement there would then be a net profit of \$12,123, instead of a loss of \$552,475. The figures above are for land and buildings proposed to be destroyed or taken, and do not include the cost of building the street, which would be the same whatever method of condemnation were used; or selling and miscellaneous expenses, which would reduce the returns to the municipality. This report also indicates that excess condemnation as a financial measure is only of special value when the change in the street layout makes abutting property available to a much higher commercial use. In the downtown section of the improvement new business frontage would have resulted, and there would have been a large increase in values, but in the other section of the improvement the increase in values would have been small, because the street is in a good residential section where land values were already high and the land after the improvement could not be put to a new use.





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